

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. CR 09-2027
)
JASON LEONARD BOYACEK,)
)
Defendant.)

APPEARANCES:

PATRICK J. REINERT, ESQ., Assistant United States Attorney, United States Attorney's Office, 111 Seventh Avenue SE, Cedar Rapids, Iowa 52401, on behalf of the Plaintiff.

LEON F. SPIES, ESQ., Mellon & Spies, 312 East College Street, Suite 216, Iowa City, Iowa 52204, on behalf of the Defendant.

DETENTION HEARING HELD BEFORE
THE HONORABLE JON STUART SCOLES,

taken at the Federal Courthouse, 111 Seventh Avenue SE, Cedar Rapids, Iowa, on the 31st day of March, 2015, commencing at 9:57 a.m., reported by Kay C. Carr, Certified Shorthand Reporter in and for the State of Iowa.

Kay C. Carr
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Registered Professional Reporter
Cedar Rapids, Iowa
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E X H I B I T S

<u>EXHIBITS</u>	<u>OFFERED</u>	<u>RECEIVED</u>
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GOVERNMENT'S:

1 - Letter	4	4
2 - Letter	4	4

DEFENDANT'S:

A through V - Not identified	4	4
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<p style="text-align: center;">7</p> <p>1 be housed, which actually could complicate the trial in 2 this matter. This is a large scale drug trafficking 3 operation with over a thousand kilos of marijuana 4 charged in the indictment.</p> <p>5 So we would suggest that the defendant is a 6 danger. He is a flight risk as well and if he flees to 7 Canada, the odds of getting him back are slim.</p> <p>8 THE COURT: Mr. Spies?</p> <p>9 MR. SPIES: Thank you, Your Honor. Well, 10 first of all, I think that the defendant's exhibits 11 demonstrate that Mr. Boyacek is neither a danger to the 12 community nor a risk of flight. He has exhibited both 13 to his family, his friends and those who know him well 14 that his efforts to challenge extradition were not 15 frivolous. It was with the advice of counsel and I 16 don't think he should be penalized for exercising his 17 rights as a Canadian citizen in Canadian courts.</p> <p>18 The problems that Mr. Reinert has pointed 19 out to the Court are not insurmountable. In fact, there 20 is precedent in this district for the Court to find that 21 an ICE detainer is not an impediment to release. Former 22 Chief Judge -- Chief Magistrate Judge Paul Zoss in 23 <u>United States v. Villanueva-Martinez</u> at 707 F. Supp. 2d 24 855 found that a detainer issued by the Immigration and 25 Customs Enforcement division was only speculative and in</p>	<p>1 appearance in court was as expeditious as possible. 2 We think that a release condition can be 3 fashioned to allow him to stay in the United States but 4 not in custody, to assist in the preparation of his 5 defense and review of the discovery materials which are 6 voluminous in this case.</p> <p>7 So all things considered, Your Honor, we 8 believe not only the evidence demonstrates that he has 9 refuted the rebuttable presumption that he's a danger or 10 risk of flight. His family, friends and the General 11 Services Security Corporation stand ready to assure his 12 appearance in court and we believe that a release can be 13 fashioned.</p> <p>14 Now, this morning, I offered Defendant's 15 Exhibits U and V, which were a case in the Western -- 16 Division of the Western District of Washington where 17 Henry Rosenau, a Canadian citizen charged with a similar 18 serious drug offense, was permitted release pending 19 trial. Now, I know, of course, in the history of that 20 case that at some point Mr. Rosenau violated the 21 conditions of his release and was taken into custody. 22 But nonetheless, the Court in Washington found a basis 23 for release pending trial. I think that the bond 24 conditions in Government's -- or excuse me -- 25 Defendant's Exhibit V demonstrate just how such a</p>
<p style="text-align: center;">8</p> <p>1 and of itself is not grounds for denying release to a 2 noncitizen of the United States. Chief Judge Zoss' 3 opinion has been cited numerous times by other courts 4 finding similarly that a detainer does not justify 5 pretrial detention and that there are mechanisms 6 available within the administrative process to obtain 7 bond on that detainer, and that's certainly something we 8 would urge the Court to consider here.</p> <p>9 Obviously, we would like to see Mr. Boyacek 10 returned to Canada, and as I said, we're ready to put a 11 monitoring program in place. His family has pledged, 12 his friends have pledged that he's not going to flee; 13 that he's going to take his responsibilities here in the 14 United States seriously.</p> <p>15 Alternatively, I think that this Court could 16 also fashion a release provision that would require him 17 to remain in Linn County, Iowa, if we were able to post 18 bond to relieve him from the detainer. Interestingly, 19 he surrendered his passport in Canada at the outset of 20 extradition proceedings there so he has no passport and 21 we would have to go through a process to obtain his 22 lawful remaining in the United States. He voluntarily 23 surrendered his -- his extradition proceedings in 24 Canada; came here with preparations and notice to the 25 United States Government to make sure that his -- his</p>	<p>10</p> <p>1 release could be fashioned.</p> <p>2 So in sum, we believe that there -- the 3 administrative impediments that the Government has 4 claimed in this case are not insurmountable; that the 5 Court can find from the exhibits introduced by the 6 defendant that Mr. Boyacek is neither a danger to the 7 community or a risk of flight. He lawfully exercised 8 his rights to challenge extradition as a citizen of 9 Canada and he's prepared to and will honor his 10 obligations to this court.</p> <p>11 THE COURT: In determining whether a 12 defendant should be released pending a trial, the Court 13 follows a two step process. The first step is to 14 determine whether detention is authorized. In this 15 case, the defendant is charged in two counts. Count 1 16 is conspiracy to distribute a thousand kilograms or more 17 of marijuana and Count 2 is money laundering conspiracy 18 and, therefore, detention is authorized under Title 18, 19 United States Code Section 3142(f)(1)(C).</p> <p>20 The second step is to determine whether 21 there's any condition or combination of conditions which 22 will reasonably assure the defendant's appearance as 23 required and the safety of the community.</p> <p>24 The Government has the burden of proof in 25 this regard. It is aided in this case by a rebuttable</p>

<p style="text-align: right;">11</p> <p>1 presumption. That is, if there's probable cause to 2 believe that the defendant has committed a serious drug 3 offense, then there's a rebuttable presumption that he 4 should be detained. That's pursuant to Section 3142(e).</p> <p>5 Here, the return of the indictment by the 6 grand jury establishes probable cause to believe the 7 defendant conspired to distribute a thousand kilograms 8 or more of marijuana and, therefore, there is a 9 rebuttable presumption that he should be detained.</p> <p>10 Now, that places the burden of production on 11 the defendant, but the burden of persuasion remains on 12 the Government, and the factors which the Court must 13 consider are set forth in Section 3142(g).</p> <p>14 They include the nature and circumstances of 15 the offense charged, including whether the offense is a 16 crime of violence or involves a narcotic drug or minor 17 victim or a firearm. Here, as I've indicated, one of 18 the charges involves distribution of marijuana.</p> <p>19 The Court's also required to consider the 20 weight of the evidence. Here, no testimony was offered 21 and, therefore, the Court obviously has no opinion as to 22 the weight of the evidence.</p> <p>23 The Court's also required to consider the 24 history and characteristics of the defendant, including 25 the defendant's character, physical and mental</p>	<p style="text-align: right;">13</p> <p>1 The Court's also required to consider the 2 defendant's past conduct, including history relating to 3 drug or alcohol abuse, criminal history and record 4 concerning appearances at court proceedings.</p> <p>5 The defendant told the pretrial services 6 officer that he tried marijuana in high school, but 7 denied that he has ever abused alcohol or other 8 controlled substances. The defendant has no prior 9 criminal record and, therefore, there's no indication 10 he's ever failed to appear for a court proceeding.</p> <p>11 The Court's required to consider whether at 12 the time of the current offense or arrest, the defendant 13 was on probation, parole or other pretrial release.</p> <p>14 Again, there's no indication defendant was on any sort 15 of probation, parole or other pretrial release at the 16 time of these events, which allegedly occurred between 17 2005 and 2007.</p> <p>18 And finally, the Court's required to 19 consider the nature and seriousness of the danger to any 20 person or the community that would be posed by the 21 defendant's release. I don't think that the defendant's 22 release would constitute any particular danger to this 23 community or to any community in Canada. I have 24 reviewed the defendant's exhibits. The Court notes that 25 the defendant has been under supervision in</p>
<p style="text-align: right;">12</p> <p>1 condition, family ties, employment, financial resources 2 and ties to the community. This information is found in 3 the Pretrial Services Report.</p> <p>4 The defendant is 41 years old. He was born 5 in Manitoba, Canada. He has lived in Canada all of his 6 life except for three years or two or three years that 7 he indicated he lived in Chicago from 2003 to 2005. His 8 parents continue to reside in Canada. He has a brother 9 and a sister, both of whom live in Canada.</p> <p>10 He has never been married and has no 11 children. He is engaged to Hara Nikolopoulos and has 12 been in a relationship for four years. She resides in 13 Canada. Apparently, the defendant was living with his 14 parents prior to surrendering himself earlier this 15 month; however, if released, he would return to Canada 16 and live with his fiancee and she has indicated that he 17 is welcome to reside with her.</p> <p>18 The defendant has not been employed since 19 2009. He told the pretrial services officer that he 20 supports himself by doing occasional work for 21 construction companies and day trading stocks.</p> <p>22 The defendant is in good physical health. 23 He has no history of mental health -- well, strike that. 24 He has been treated for anxiety back between 2007 and 25 2009.</p>	<p style="text-align: right;">14</p> <p>1 British Columbia since October of 2011 and apparently 2 has been compliant. I've also read the numerous letters 3 indicating that defendant, in the opinion of the 4 writers, is an upstanding citizen. He has no 5 convictions for any violent offenses; haven't heard any 6 testimony today that these offenses involved any 7 threatened or actual violence, so I don't believe the 8 defendant's a danger to the community.</p> <p>9 The issue then is whether or not there are 10 any conditions or combinations of conditions which will 11 reasonably assure the defendant's appearance as 12 required. Now, if the defendant were not a citizen of 13 Canada and if he had ties to this community, it's likely 14 that he would be released. But obviously in this case, 15 the complicating factor is that the defendant has no 16 ties to this community, is a citizen of Canada and 17 apparently would intend to return to Canada.</p> <p>18 I would note that his remaining in the 19 United States has all kinds of complications associated 20 with it. I -- I don't believe that the mere fact that 21 there's an ICE detainer prevents this Court from 22 ordering his release in this criminal proceeding. That 23 is, I agree that I make a decision as to whether 24 defendant is detained for purposes of this criminal 25 proceeding and immigration authorities make a decision</p>

<p style="text-align: right;">15</p> <p>1 as to whether he would be released for their purposes, 2 and I have, in fact, ordered in certain cases -- 3 relatively rare cases that a defendant be released when 4 I'm convinced that he's not a risk of flight; 5 notwithstanding the fact that there's an ICE detainer, 6 and it's my understanding that at least in some of those 7 cases, he subsequently has negotiated his release from 8 the ICE detainer. So I don't think the ICE detainer is 9 -- prevents me from ordering his release.</p> <p>10 However, if I ordered his release he would, 11 in fact, remain in custody except instead of being in 12 the marshal's custody, he would be in ICE custody and as 13 -- and I obviously don't have any authority to tell 14 immigration officials what they should or shouldn't do, 15 so he may well remain in ICE custody. As Mr. Reinert 16 points out, there's no guarantee as to where ICE 17 officials may decide to hold him and that may complicate 18 trial preparation.</p> <p>19 If he were somehow able to negotiate his 20 release from detention by the ICE officials, as 21 Mr. Spies points out, in order to remain in the 22 United States, he would likely require a passport. 23 Frankly, I'm not sure -- this would be such a unique 24 circumstance, I'm not exactly sure how that would work 25 with respect to obtaining a passport. But more</p>	<p style="text-align: right;">17</p> <p>1 would return in a month for the final pretrial 2 conference or status conference and he would return a 3 month after that for the trial. Or he may be telling 4 the truth, but when he gets back to Canada and starts 5 considering the possibility that he could be convicted 6 and spend a substantial amount of time in federal 7 prison, he may change his mind about his willingness to 8 return. Or he may be lying altogether and has no 9 intention to return, but -- to the United States, but 10 instead intends to restart the clock with respect to 11 extradition.</p> <p>12 As documented in the exhibits, the 13 extradition process has taken a substantial length of 14 time -- three-and-a-half years I guess from the time of 15 his arrest -- and it took some time to locate him.</p> <p>16 Incidentally, I would note parenthetically 17 that I do use GPS monitoring from time to time, but 18 frankly, that's -- it's -- if a defendant is inclined to 19 flee or fail to appear, it's a relatively easy process 20 to simply snip off the anklet and away he goes. And 21 notwithstanding the good intentions of this private 22 monitoring service, if the defendant returns to Canada 23 and has some sort of anklet and snips it off and takes 24 off to, you know, Timbuktu, the -- the private 25 monitoring service doesn't do much good.</p>
<p style="text-align: right;">16</p> <p>1 problematically, if he obtained a passport, then that 2 would allow him to cross international borders and 3 return to Canada or theoretically go anywhere else he 4 wanted to go, which brings me to the issue of his 5 returning to Canada.</p> <p>6 If I release him and if he somehow 7 negotiates his release from ICE detention and if he 8 returns to Canada, getting him back to the United States 9 is problematic. This case began with the return of the 10 indictment in September of 2009. According to 11 Exhibit 1, the extradition was initially requested in 12 August of 2010. Defendant was not located and arrested 13 until January of 2011, but since that time, he has 14 vigorously contested his return to the United States to 15 answer to these charges.</p> <p>16 The history of this case is detailed in the 17 Court of Appeals decision that was, I think, entered in 18 November of last year and is attached to Exhibit 1. As 19 I understand it, the defendant appealed that decision to 20 the Canadian Supreme Court and it was not until just a 21 few weeks ago that the defendant then discontinued his 22 appeal and surrendered himself for return to the 23 United States.</p> <p>24 Now, the defendant may well be telling the 25 truth that if he were allowed to go back to Canada, he</p>	<p style="text-align: right;">18</p> <p>1 According to the Exhibits 1 and 2, which are 2 both authored by the same individual; they're authored 3 by Janet Henchey, who is identified as director general 4 and senior general counsel of the International 5 Assistance Group, Litigation Branch, of the Canadian 6 Department of Justice. Exhibit 2 is a letter dated 7 July 17 of last year and then Exhibit 1 is a cover 8 letter that was just dated yesterday.</p> <p>9 In those letters, Ms. Henchey describes the 10 extradition process under Canadian law. In the letter 11 sent last July, she was either asked or anticipated the 12 possibility that a Canadian resident would be released 13 here in the United States following extradition and 14 returned to -- and permitted to return to Canada with a 15 promise that he then come back to the United States for 16 court proceedings and I'll just read the last paragraph 17 of -- of Exhibit 2 here.</p> <p>18 It says, "If a person were to purport to 19 enter into an anticipatory waiver of extradition as a 20 condition of their bail on charges in a foreign state 21 and then reneged on that undertaking upon arrival in 22 Canada, there would be no mechanism in Canadian law to 23 enforce the undertaking. An anticipatory waiver is not 24 contemplated by the act. Indeed, the lack of express 25 statutory authority to enforce a prior undertaking to</p>

<p>19</p> <p>1 waive extradition would likely lead to extensive 2 litigation in Canadian courts. Of course, whether a 3 person accused or convicted of a crime outside of Canada 4 can be trusted to honor the bail terms established by 5 the foreign court is primarily an issue between that 6 person and the foreign court."</p> <p>7 And Ms. Henchey repeats those sentiments in 8 her letter dated yesterday. She notes that the 9 defendant vigorously contested his extradition. She 10 notes that the extradition hearing took place over 11 nearly two years and that there was an appeal, and that 12 following an unsuccessful appeal, the defendant appealed 13 to the Supreme Court of Canada and then finally 14 surrendered himself to the United States authorities on 15 March 26, more than three-and-a-half years after his 16 arrest on the extradition warrant.</p> <p>17 Ms. Henchey opines in her most recent letter 18 that the process of engaging a second extradition 19 proceeding would likely take several years and would 20 require substantial resources to complete.</p> <p>21 Now, again, it may well be that the 22 defendant is being truthful and acting in good faith 23 when he says I'll come back if you let me go. If you 24 let me go home, I'll come back, but there's nothing to 25 prevent him from simply changing his mind, and if he</p>	<p>21 Canada, the only way to get him back unless he 2 voluntarily returns is to go through an extradition 3 proceeding, which the first time around took 4 three-and-a-half years.</p> <p>5 Based on all of those circumstances, the 6 Court concludes that there is no condition or 7 combination of conditions which will reasonably assure 8 the defendant's appearance as required if he were 9 released in this case. Therefore, Mr. Boyacek, I'm 10 ordering that you be detained pending the trial in this 11 matter.</p> <p>12 You do have the right to appeal my decision 13 by filing a motion for review by Chief Judge Linda Reade 14 and Mr. Spies can advise you on how that's done.</p> <p>15 Is there anything else we need to talk 16 about, Mr. Reinert?</p> <p>17 MR. REINERT: No, Your Honor.</p> <p>18 THE COURT: Mr. Spies?</p> <p>19 MR. SPIES: Not at this time. Thank you.</p> <p>20 THE COURT: That will conclude the hearing. (Proceedings concluded at 10:25 a.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>20</p> <p>1 does, it results in the possibility of substantial 2 lengthy expensive litigation in order get back to where 3 we're at here today.</p> <p>4 I would note that Count 1 charges the 5 defendant with conspiracy to distribute a thousand 6 kilograms or more of marijuana. If I understand it 7 correctly, if the defendant is convicted of the offense 8 as charged, he faces a mandatory minimum 10 years in 9 prison and he could be sent to prison for life.</p> <p>10 So again, even if he's acting in good faith 11 today, when he gets back to Canada and starts 12 contemplating the idea of 10 years in a federal prison 13 in the United States, if he simply changed his mind, 14 there's no easy remedy for that other than to start over 15 again with the same process that we've already gone 16 through or the Canadian authorities have gone through 17 rather painstakingly.</p> <p>18 So in summary, I start with the proposition 19 that there is a rebuttable presumption that the 20 defendant should be detained. I have considered the 21 fact in -- that there's a mandatory minimum 10 year 22 prison term here if the defendant is convicted, which I 23 think is relevant to the issue of whether he will 24 appear. And then I add to that the obvious fact that 25 the defendant is a Canadian citizen and if he returns to</p>	<p>22</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 C E R T I F I C A T E</p> <p>6 I, Kay C. Carr, a Certified Shorthand Reporter of 7 the State of Iowa, do hereby certify that I acted as the 8 official court reporter at the proceedings in the above-entitled matter at the time and place indicated.</p> <p>9 That I reported in shorthand all of the proceedings 10 had at the said time and place and that said shorthand notes were reduced to print by means of a computer-aided 11 transcription device under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.</p> <p>12 I further certify that I am not related to or employed by any of the parties to this proceeding, and 13 further that I am not a relative or employee of any attorney of counsel employed by the parties hereto or 14 financially interested in the action.</p> <p>15 IN WITNESS WHEREOF, I have set my hand this 31st day of May, 2015.</p> <p>16</p> <p>17</p> <p>18 /s/ <u>Kay C. Carr</u> 19 Kay C. Carr Certified Shorthand Reporter Registered Professional Reporter 20 Cedar Rapids, Iowa (319) 362-1543</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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